

APPEAL NO. 041188
FILED JULY 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 29, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, June 14 through September 12, 2003, and that the claimant is entitled to SIBs for the second, third, and fourth quarters, September 13, 2003, through June 11, 2004. The appellant (carrier) appealed, disputing the determinations of SIBs entitlement. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant is not entitled to SIBs for the first quarter; that the claimant sustained a compensable injury on _____, with an impairment rating of 15%; that the claimant did not elect to commute any portion of his impairment income benefits; and that the claimant was unemployed during the qualifying periods for the disputed quarters. Additionally, the parties stipulated to the dates of the qualifying periods and the quarters in dispute.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the disputed quarters. The hearing officer considered the evidence, including the claimant's documented job contacts during the qualifying periods, and found that the claimant had made a good faith effort to obtain employment commensurate with his ability to work during the second, third, and fourth quarter qualifying periods.

With regard to the good faith criterion, Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work in any capacity shall look for employment commensurate with his ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. Good faith effort is a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The record reflects that the claimant underwent surgery on his right shoulder and right knee. Regarding the direct result criteria, the Appeals Panel has long held that the direct result requirement may be met by showing a serious injury with long-lasting effects which precludes a return to the preinjury employment. The hearing officer's determination on this point is supported by the evidence.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge